Bulletin No. 1996–40
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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

SPECIAL ANNOUNCEMENT

Announcement 96–100, page 10.
CO–24–96, 1996–30 I.R.B., the notice of a public hearing relating to the carryover and carryback of losses to consolidated returns, is corrected.

EMPLOYEE PLANS

Rev. Rul. 96–47, page 7.
Participant consent; significant detriment. Based on the facts and circumstances described in the revenue ruling, the loss of the right to choose among a broad range of investment alternatives with materially different risk and return characteristics is a significant detriment that invalidates a participant's consent to an immediate distribution.

Rev. Rul. 96–48, page 4.
Nondiscrimination and coverage; rollover. The nondiscrimination, actual deferral percentage, and actual contribution percentage tests of a qualified plan are not affected by a qualified rollover to that plan prior to the individual who makes the rollover meeting the plan's age and service requirements. In addition, the rollover will not trigger the minimum nonintegrated benefit or minimum nonintegrated contribution requirements of section 416(c) of the Code.

EXEMPT ORGANIZATIONS

Announcement 96–101, page 11.
A list is given of organizations now classified as private foundations.

TAX CONVENTIONS

Page 8.
The bilateral agreements between the United States and the Republic of Fiji, providing for the reciprocal tax exemption of income from the international operation of ships and/or aircraft, are set forth.

ADMINISTRATIVE

Del. Order 155 (Rev. 4), page 9.
This order gives authority to sign recommendation letters for nonsuit settlements to the Regional Counsel and District Counsel in the field and to the Deputy Associate Chief Counsel and Assistant Chief Counsel in the National Office.

Announcement 96–95, page 10.
Waiver or reimbursement of expenses of a regulated investment company. Comments are requested on what effect the allocation of a waiver or reimbursement or the allocation of certain differences in advisory fees to specific shares of a regulated investment company should have on the deduction for dividends paid.

Announcement 96–102, page 12.
T.D. 8675, 1996–29 I.R.B. 5, relating to the modification of debt instruments, is corrected.

Announcement 96–103, page 13.
T.D. 8677, 1996–30 I.R.B. 7, relating to the deductions and losses of members and also the carryover and carryback of losses to consolidated returns, is corrected.

Finding Lists begin on page 17.
Announcements of Disbarments and Suspensions begin on page 14.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is ''protecting the revenue.'' The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

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Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 401.—Qualified Pension, Profit-Sharing, and Stock Bonus Plans

26 CFR 1.401(a)(4)–1: Nondiscrimination requirements of § 401(a)(4)
(Also, §§ 410, 416; 1.410(b)–6, 1.416–1.)

Nondiscrimination and coverage; rollover. The nondiscrimination, actual deferral percentage, and actual contribution percentage tests of a qualified plan are not affected by a qualified rollover to that plan prior to the individual who makes the rollover meeting the plan's age and service requirements. In addition, the rollover will not trigger the minimum nonintegrated benefit or minimum nonintegrated contribution requirements of section 416(c) of the Code.

Rev. Rul. 96–48

ISSUES

(1) If, under a qualified retirement plan, employees who have not satisfied the minimum age and service requirements for participation for a plan year are permitted to make ''rollover contributions'' to the plan's trust, to what extent are such employees taken into account for purposes of the minimum coverage requirements of § 410(b) of the Internal Revenue Code and the nondiscrimination requirements of §§ 401(a)(4), 401(k)(3), and 401(m)(2)?

(2) Are the employees described in Issue 1 participants for purposes of the minimum contribution and benefit requirements of § 416(c)?

FACTS

Employer X maintains Plan A, a profit-sharing plan qualified under § 401(a) that includes a qualified cash or deferred arrangement, as defined in § 1.401(k)–1(a)(4)(i) of the Income Tax Regulations, and that provides for matching contributions and nonelective contributions. Plan A does not accept after-tax employee contributions. Employer X consists of Division M and Division N. Employees of Division M are eligible to participate in Plan A, i.e., to make salary deferral contributions and receive allocations of matching and nonelective contributions, when they have completed one year of service with Employer X. Employees of Division M who have satisfied Plan A's minimum one year of service requirement are also permitted to make rollover contributions to Plan A's trust. Effective January 1, 1997, Plan A is amended to permit all employees of Division M, including employees who have not completed one year of service, to make rollover contributions to Plan A's trust at any time following commencement of employment. Plan A defines a rollover contribution as a rollover contribution under § 402(c), 403(a)(4), or 408(d)(3)(A)(ii), or a direct rollover under § 401(a)(31).

LAW AND ANALYSIS (ISSUE 1)

MINIMUM COVERAGE REQUIREMENTS OF § 410(b)

Section 410(b) describes minimum coverage requirements that a plan must satisfy in order to be qualified under § 401(a). Under § 1.410(b)–7(c)(1), a plan that consists of (1) elective contributions under a section 401(k) plan (as defined in § 1.410(b)–9), (2) employee and matching contributions under a section 401(m) plan (as defined in § 1.410(b)–9), and (3) nonelective contributions (which are contributions that are neither elective, employee, nor matching contributions) is treated as three separate plans, each of which must separately satisfy the requirements of § 410(b). Under § 1.410(b)–6(b), if a plan applies minimum age and service eligibility conditions permissible under § 410(a)(1) (including any entry date conditions under § 410(b)(4)(C)) and excludes all employees who do not meet those conditions from benefiting under the plan, then all employees who fail to satisfy those conditions are excludable employees for purposes of determining whether the plan satisfies § 410(b).

With respect to the portion of Plan A that is a section 401(k) plan, § 1.410(b)–3(a)(2)(i) provides that an employee is treated as benefiting under the plan for a plan year if and only if the employee is an eligible employee under the plan for the plan year, as defined in § 1.401(k)–1(g)(4). In general, under § 1.401(k)–1(g)(4), an employee is an eligible employee only if the employee is directly or indirectly eligible to make a cash or deferred election under the plan for all or a portion of the plan year.

Section 1.401(k)–1(a)(3)(i) defines a cash or deferred election as any election by an employee to have the employer either provide an amount to the employee in cash or another taxable benefit that is not currently available, or contribute an amount to a trust, or provide an accrual or other benefit, under a plan deferring the receipt of compensation. An election to make a rollover contribution under Plan A is not a cash or deferred election. Consequently, the employees who are not eligible to make salary deferral contributions for a plan year because they have not met Plan A's minimum one year of service requirement are not eligible employees within the meaning of § 1.401(k)–1(g)(4) and are not treated as benefiting under the portion of Plan A that is a section 401(k) plan even though they are eligible to make rollover contributions under Plan A.

With respect to the portion of Plan A that is a section 401(m) plan, § 1.410(b)–3(a)(2)(i) provides that an employee is treated as benefiting under the plan for a plan year if and only if the employee is an eligible employee under the plan for the plan year, as defined in § 1.401(m)–1(f)(4). In general, under § 1.401(m)–1(f)(4), an employee is an eligible employee only if the employee is directly or indirectly eligible to make an employee contribution or to receive an allocation of matching contributions under the plan for the plan year.

Section 1.401(m)–1(f)(6) defines employee contribution to mean any mandatory or voluntary contribution to the plan that is treated at the time of contribution as an after-tax employee contribution. The rollover contributions that are permitted under Plan A are not after-tax contributions and therefore are not employee contributions for purposes of § 401(m). Consequently, the employees who are not eligible to receive allocations of matching contributions for a plan year because they have not met Plan A's minimum one year of service requirement are not eligible employees within the meaning of § 1.401(m)–1(f)(4) and are not treated as benefiting under the portion of Plan A that is a section 401(m) plan even though they are eligible to make rollover contributions under Plan A.

With respect to the portion of Plan A that is treated as a separate plan consisting of nonelective contributions, § 1.410(b)–3(a)(1) provides that an employee is treated as benefiting under the plan for a plan year if and only if the employee receives an allocation for the plan year that is taken into account under § 1.401(a)(4)–2(c)(2)(ii) in determining whether the plan satisfies the

nondiscriminatory amount requirement of § 1.401(a)(4)–1(b)(2). As provided in § 1.401(a)(4)–11(b)(1), rollover contributions are not taken into account in determining whether a plan satisfies the nondiscriminatory amount requirement of § 1.401(a)(4)–1(b)(2). Consequently, the employees who do not receive allocations of nonelective contributions for a plan year because they have not satisfied Plan A's minimum one year of service requirement are not treated as benefiting under the portion of Plan A that is treated as a separate plan consisting of nonelective contributions even though they make (or are eligible to make) rollover contributions under Plan A.

Thus, the employees who have not met Plan A's minimum one year of service requirement for participation for a plan year are not treated as benefiting under any of the three portions of Plan A that must separately satisfy the requirements of § 410(b) even though such employees make (or are eligible to make) rollover contributions under Plan A. Therefore, under § 1.410(b)–6(b), these employees are excludable employees for purposes of applying the requirements of § 410(b) to Plan A.

NONDISCRIMINATION REQUIREMENTS OF §§ 401(a)(4), 401(k)(3), AND 401(m)(2)

In order to be qualified under § 401(a), a plan must satisfy the nondiscrimination requirements of § 401(a)(4). Among these requirements are the nondiscriminatory amount of contributions or benefits requirement of § 1.401(a)(4)–1(b)(2) and the nondiscriminatory availability of benefits, rights, and features requirement of § 1.401(a)(4)–1(b)(3).

As provided in § 1.401(a)(4)–1(b)(2)(ii)(B), the nondiscriminatory amount requirement that applies to a section 401(k) plan is the actual deferral percentage (ADP) test in § 401(k)(3). The nondiscriminatory amount requirement that applies to a section 401(m) plan is the actual contribution percentage (ACP) test in § 401(m)(2). Under § 1.401(k)–1(b)(2), only eligible employees are taken into account in the ADP test. Likewise, under § 1.401(m)–1(b)(1), only eligible employees are taken into account in the ACP test. As noted above, the employees who are eligible to make rollover contributions, but not to make salary deferral contributions or to receive matching contributions, under Plan A are not eligible employees with respect to the portion of Plan A that is a section 401(k) plan or the portion of Plan A that is a section 401(m) plan. Thus, these employees are not included in either the ADP test or the ACP test.

In general, only employees within the meaning of § 1.401(a)(4)–12 (''benefiting employees'') are tested in applying the nondiscrimination requirements of § 401(a)(4) to a plan. Under § 1.401-(a)(4)–12, an employee is a benefiting employee for a given plan year for purposes of the nondiscrimination requirements of § 401(a)(4) if and only if the employee benefits under the plan for the plan year within the meaning of § 1.410(b)–3. As noted above, employees do not benefit under a plan within the meaning of § 1.410(b)–3 merely because they make (or are eligible to make) rollover contributions under the plan, since such contributions are not taken into account in determining whether a plan satisfies the nondiscriminatory amount requirement of § 1.401-(a)(4)–1(b)(2). Thus, employees who make (or are eligible to make) rollover contributions under Plan A, but who do not receive allocations of nonelective contributions for a plan year, are not tested in applying the nondiscriminatory amount of contributions or benefits requirement to the portion of Plan A that is treated as a separate plan consisting of nonelective contributions.

The right to make a rollover contribution is an ''other right or feature'' under § 1.401(a)(4)–4(e)(3)(iii)(I) that must satisfy the nondiscriminatory availability of benefits, rights, and features requirement of § 1.401(a)(4)–1(b)(3). Under § 1.401(a)(4)–4, the tests of whether a benefit, right, or feature is made available in a nondiscriminatory manner are generally applied to benefiting employees. However, § 1.401(a)(4)–4(d)(2) also requires a plan to satisfy a separate test with respect to benefits, rights, and features provided to nonexcludable employees with accrued benefits who are not currently benefiting under the plan (frozen participants). As noted above, employees are not benefiting employees merely because they make (or are eligible to make) rollover contributions under a plan. In addition, the employees who make (or are eligible to make) rollover contributions under Plan A, but who have not met Plan A's minimum one year of service requirement for participation for a plan year, are not frozen participants. Thus, with respect to employees who are not benefiting employees under Plan A for a plan year and who are not frozen participants, the regulations under § 401(a)(4) do not provide guidance for determining whether a benefit, right, or feature available to such employees, such as the right to make rollover contributions, satisfies the nondiscriminatory availability of benefits, rights, and features requirement of § 1.401(a)(4)–1(b)(3).

Section 1.401(a)(4)–1(d) provides that the Commissioner may, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, provide any additional guidance that may be necessary or appropriate in applying the nondiscrimination requirements of § 401(a)(4), including additional safe harbors and alternative methods and procedures for satisfying those requirements. Pursuant to this authority, the following rule is provided.

A plan must separately satisfy the nondiscriminatory availability requirement of § 1.401(a)(4)–1(b)(3) with respect to each benefit, right, or feature that is made available under the plan to employees who do not benefit under the plan for a plan year within the meaning of § 1.410(b)–3 and who are not frozen participants within the meaning of § 1.401(a)(4)–4(d)(2). (Such employees are hereinafter referred to as ''limited participants''.) A plan will separately satisfy this requirement if the benefit, right, or feature is made available to limited participants in a manner that, under all of the relevant facts and circumstances, does not discriminate significantly in favor of nonexcludable employees who are highly compensated employees within the meaning of § 414(q). For purposes of satisfying this requirement, whether an employee is treated as an excludable employee is determined under § 1.410(b)–6 based on any minimum age and service requirements that are applied under the plan as a condition on the availability of the benefit, right, or feature.

If either of the following two safe harbors is satisfied, a benefit, right, or feature will be treated as made available in a manner that does not discriminate significantly in favor of nonexcludable employees who are highly compensated employees. The first safe harbor will automatically be satisfied if the plan, within the meaning of § 1.401(a)(4)–12, meets the following requirements. The limited participants to whom the benefit, right, or feature is currently available, within the meaning of § 1.401(a)(4)–4(b), are all those, and only those,

employees who are excluded from participation solely on account of failure to satisfy the plan's minimum age and service requirements, and the benefit, right, or feature also satisfies the effective availability requirement of § 1.401(a)(4)–4(c). Thus, a plan would automatically satisfy this safe harbor if it allowed rollovers by all employees who will participate once they satisfy the plan's minimum age and service rules (and not by any other employees who are excluded from participation in the plan). A plan will not fail to satisfy this design-based safe harbor merely because it limits the availability of the benefit, right, or feature to those employees who have satisfied any lesser uniform minimum age and service requirements. The second safe harbor will be satisfied if the benefit, right, or feature is one that will satisfy § 1.401(a)(4)–4(b) and (c) either (1) when the benefit, right, or feature is treated as available only to employees who are limited participants (i.e., as if it were not available to other employees to whom the benefit, right, or feature is, in fact, available) or (2) when the benefit, right, or feature is treated as available to both limited participants and all other employees to whom the benefit, right, or feature is, in fact, available under the plan.

Applying this rule to Plan A, the right of employees who have not satisfied Plan A's minimum one year of service requirement for participation for a plan year to make rollover contributions must separately satisfy the nondiscriminatory availability requirement of § 1.401(a)-(4)–1(b)(3). The limited participants to whom the right to make rollover contributions under Plan A is currently available, within the meaning of § 1.401(a)-(4)–4(b), are all those, and only those, employees who are excluded from participation solely on account of failure to satisfy the plan's minimum one year of service requirement, and, absent other relevant facts and circumstances, the right of such limited participants to make rollover contributions also satisfies the effective availability requirement of § 1.401(a)(4)–4(c). (The right to make rollover contributions does not fail to be currently and effectively available to an employee merely because the employee does not have an amount that is eligible to be rolled over.) Plan A thus satisfies the requirements of the design-based safe harbor described above. Plan A is therefore treated as separately satisfying the nondiscriminatory availability requirement of § 1.401(a)(4)– 1(b)(3) with respect to the right of employees who have not satisfied Plan A's minimum one year of service requirement for participation for a plan year to make rollover contributions.

HOLDINGS (ISSUE 1)

1. Plan A is not precluded from treating as excludable, for purposes of § 410(b), all employees who have not completed one year of service (as required by the plan for participation) merely because Plan A permits rollover contributions to be made by such employees.

2. Employees who are eligible to make rollover contributions, but who have not satisfied Plan A's minimum one year of service requirement for participation for a plan year, are not taken into account in applying the ADP test in § 401(k)(3) to the portion of Plan A that is a section 401(k) plan, the ACP test in § 401(m)(2) to the portion of Plan A that is a section 401(m) plan, or the nondiscrimination in amount of contributions or benefits requirement under § 401(a)(4) to the portion of Plan A that consists of nonelective contributions.

3. Plan A must separately satisfy the nondiscriminatory availability requirement of § 1.401(a)(4)–1(b)(3) with respect to the right of employees who have not satisfied the minimum one year of service requirement for participation for a plan year to make rollover contributions to the plan. Plan A is treated as separately satisfying this requirement because it satisfies the requirements of the design-based safe harbor described in this revenue ruling.

LAW AND ANALYSIS (ISSUE 2)

Section 416(c) generally requires each non-key employee who is a participant in a defined benefit or defined contribution plan to accrue a minimum benefit or receive a minimum contribution under the plan in any year the plan is top-heavy. Section 1.416–1, Q&A M–4 and Q&A M–10, describes which employees must receive the top-heavy minimums. In general, each non-key employee who is a participant in a top-heavy plan must receive the minimum if, in the case of a defined contribution plan, the participant has not separated from service by the end of the plan year, or, in the case of a defined benefit plan, the participant has at least 1,000 hours of service for the accrual computation period. Non-key employees may not fail to receive the top-heavy minimum by virtue of being excluded from participation because their compensation is less than a stated amount or because of failure to make mandatory employee contributions or elective contributions.

Employees who have not satisfied the minimum age and service requirements for plan participation for a plan year are not participants for purposes of § 416(c) merely because they make (or are eligible to make) rollover contributions under a plan. Such employees, therefore, are not required to accrue minimum benefits or receive minimum allocations for years in which a plan is top-heavy.

HOLDING (ISSUE 2)

For purposes of the minimum contribution and benefit requirements of § 416(c), employees are not participants for a plan year merely because they make (or are eligible to make) rollover contributions under Plan A.

DRAFTING INFORMATION

The principal author of this revenue ruling is James Flannery of the Employee Plans Division. For further information regarding this revenue ruling, please contact the Employee Plans Division's taxpayer assistance telephone service between the hours of 1:30 p.m. and 4 p.m. Eastern Time, Monday through Thursday, by calling (202) 622–6074/6075, or Mr. Flannery on (202) 622–6214. (These telephone numbers are not toll-free numbers.)

Section 410.—Minimum Coverage Requirements

26 CFR 1.410(b)–6: Excludable employees.

Whether an employee who has not satisfied the minimum age and service requirements for participation in a plan that is qualified under § 401(a) of the Internal Revenue Code, but who has the right to make a rollover contribution to the plan's trust, is an excludable employee for purposes of applying the minimum coverage requirements of § 410(b) to the plan. See Rev. Rul. 96–48, page 4.

Section 411.—Minimum Vesting Standards

26 CFR 1.411(a)–11: Restriction and valuation of distributions.

Participant consent; significant detriment. Based on the facts and circumstances described in the revenue ruling, the loss of the right to choose among a

broad range of investment alternatives with materially different risk and return characteristics is a significant detriment that invalidates a participant's consent to an immediate distribution.

Rev. Rul. 96–47

ISSUE

Does a defined contribution plan that allows participants who have not terminated employment to direct the investment of their accounts and that offers a broad range of investment choices satisfy the consent requirements of § 411(a)(11) of the Internal Revenue Code if the accounts of former employees who do not consent to an immediate distribution of their account balances are required to be invested in a money market fund?

FACTS

Plan A, a profit-sharing plan, allows each participant who has not terminated employment to choose the manner in which his or her account is invested among the plan's investment alternatives. The choices include a broad range of investment alternatives, including a money market fund and several other funds with materially different risk and return characteristics.

Plan A provides that a participant who terminates employment prior to normal retirement date will receive his or her vested account balance at normal retirement date unless the participant elects, upon termination of employment or any time thereafter, to receive an immediate distribution of the vested account balance. Plan A also provides that upon termination of employment the participant may no longer choose among investment alternatives and the participant's account will automatically be invested in the money market fund until distributed.

LAW AND ANALYSIS

Section 411(a)(11) sets forth consent requirements that must be satisfied with respect to certain distributions in order for a plan to be qualified under § 401(a). Under § 411(a)(11), if the present value of a participant's nonforfeitable benefit exceeds $3,500, the plan must provide that the benefit is not immediately distributable without the participant's consent.

Section 1.411(a)–11(c)(2)(i) of the Income Tax Regulations provides that consent to a distribution is not valid if, under the plan, a significant detriment is imposed on any participant who does not consent to the distribution. That regulation further provides that whether or not a significant detriment is imposed is determined based on the particular facts and circumstances.

Based on the facts and circumstances applicable to Plan A, the loss of the right to choose among a broad range of investment alternatives with materially different risk and return characteristics is a significant detriment, within the meaning of § 1.411(a)–11(c)(2)(i), that is imposed by Plan A on a participant who does not consent to a distribution. Therefore, Plan A permits an immediate distribution without a valid consent.

HOLDING

Plan A fails to satisfy § 411(a)(11) because a participant's benefit is immediately distributable under the plan without the participant's valid consent.

EFFECT OF PRIOR DETERMINATION LETTER

A plan that has received a determination letter on a provision inconsistent with this revenue ruling, and that satisfies the conditions for reliance set forth in section 22.04(1) through (4) of Rev. Proc. 96–6, 1996–1 I.R.B. 151, may continue to rely on that determination letter for the period described in Rev. Proc. 96–6. Such a plan, however, is not entitled to the extended reliance provisions of Rev. Proc. 89–9, 1989–1 C.B. 780, and Rev. Proc. 89–13, 1989–1 C.B. 801, as modified by Rev. Proc. 93–9, 1993–1 C.B. 474, and Rev. Proc. 93–39, 1993–2 C.B. 513, with respect to the guidance in this revenue ruling. A plan that is amended to comply with this revenue ruling will not lose its otherwise applicable extended reliance period.

DRAFTING INFORMATION

The principal author of this revenue ruling is James Flannery of the Employee Plans Division. For further information regarding this revenue ruling, please contact the Employee Plans Division's taxpayer assistance telephone service between the hours of 1:30 p.m. and 4 p.m. Eastern Time, Monday through Thursday, by calling (202) 622–6074/6075, or Mr. Flannery on (202) 622–6214. (These telephone numbers are not toll-free numbers.)

Section 416.—Special Rules for Top-Heavy Plans

26 CFR 1.416–1: Questions and answers on top-heavy plans.

Whether an employee who has not satisfied the minimum age and service requirements for participation in a plan that is qualified under § 401(a) of the Internal Revenue Code, but who has the right to make a rollover contribution to the plan's trust, is a participant for purposes of the minimum contribution or benefit requirements of § 416(c). See Rev. Rul. 96–48, page 4.

Part II. Treaties and Tax Legislation

Subpart A.—Tax Conventions

FIJI

REPUBLIC OF FIJI
MINISTRY OF
FOREIGN AFFAIRS
SUVA
AUGUST 12, 1996

The Ministry of Foreign Affairs of the Government of the Republic of Fiji presents its compliments to the Embassy of the United States of America and has the honour to refer to the latter's Note No. 64 of June 19, 1996, the text of which reads as follows:

''The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Government of the Republic of Fiji and has the honour to propose that the two governments conclude an agreement to exempt from income tax on a reciprocal basis, income derived by residents of the other country from the international operation of ships and aircraft. The terms of the agreement are as follows:

The Government of the United States of America, in accordance with section 872(B) and 883(A) of the Internal Revenue Code, agrees to exempt from tax gross income derived from the international operation of ships or aircraft by individuals who are residents of Fiji (other than United States citizens) and corporations which are incorporated in Fiji.

The Government of the Republic of Fiji agrees to exempt from tax gross income derived from the international operation of ships or aircraft by individuals who are residents of the United States of America (other than Fiji citizens) and corporations which are incorporated in the United States of America.

In the case of a Fiji corporation, the exemption shall apply only if the corporation meets one of the following conditions:

(I) The corporation's stock is primarily and regularly traded on an established securities market in Fiji, another country which grants an equivalent exemption to U.S. corporations, or the United States,

OR

(II) More than 50 percent of the value of the corporation's stock is owned directly or indirectly by individuals who are residents of Fiji or of another foreign country which grants an equivalent exemption to U.S. corporations or by a corporation organized in a country which grants an equivalent exemption to U.S. corporations and whose stock is primarily and regularly traded on an established securities market in that country, another country which grants an equivalent exemption to U.S. corporations, or the United States.

For the purpose of exemption from the U.S. tax, Subparagraph (II) will be considered to be satisfied if the corporation is a ''controlled foreign corporation'' under the Internal Revenue Code.

In the case of a U.S. corporation, the exemption shall apply only if the corporation meets the ownership requirements under Fiji law.

In this agreement:

(A) The terms ''contracting state'', and ''other contracting state'' mean the Sovereign Democratic Republic of Fiji or the United States of America, the governments of which have concluded this agreement.

(B) Gross income includes all income derived from international operation of ships or aircraft, including:

(I) Income from the rental on a full (time or voyage) basis of ships or aircraft used in international transport;

(II) Income from the rental on a bareboat basis of ships or aircraft used in international transport;

(III) Income from the rental of containers and related equipment used in international transport that is incidental to income from the international operation of ships and aircraft; and

(IV) Gains from the sale or other alienation of ships or aircraft used in international transport derived by a person primarily engaged in the international operation of ships or aircraft.

In the application of this agreement by a contracting state, any term not defined in this agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that state relating to the taxes to which this agreement applies.

The Embassy proposes that if the foregoing is acceptable to the Government of the Republic of Fiji, this note and the Ministry's note in reply shall constitute an agreement. This agreement shall enter into force on the date of the Ministry's note in reply and shall have effect in respect of income derived on or after January 1, 1996, and during all prior years for which the relevant statute of limitations remains open on that date.

This agreement shall continue into force until the Government of either contracting state gives written notice of termination of the agreement to the Government of the other contracting state through the diplomatic channel.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Government of the Republic of Fiji the assurances of its highest consideration.''

The Ministry has the further honour to confirm that the Government of the Republic of Fiji accepts that the Embassy's above-quoted Note and this Note in reply from the Ministry shall constitute an agreement between the two governments to exempt from income tax on a reciprocal basis, income derived by residents of the other country from the international operation of ships and aircraft.

The Ministry of Foreign Affairs of the Government of the Republic of Fiji avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Part III. Administrative, Procedural, and Miscellaneous

Delegation Order No. 155 (Rev. 4)

Delegation of Authority

AGENCY: Internal Revenue Service

ACTION: Delegation of Authority

SUMMARY: This delegation order is revised to give authority to sign recommendation letters for nonsuit settlements to the Regional Counsel and District Counsel in the field and to the Deputy Associate Chief Counsel and Assistant Chief Counsel in the National Office. In addition, it has been expanded in scope to cover nonrefund matters. The text of the delegation order appears below.

EFFECTIVE DATE: August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Sara M. Coe, CC:DOM:FS:PROC, Room 4135, 1111 Constitution Avenue, NW, Washington, DC 20224, (202) 622–7940 (not a toll-free call).

Recommendation Letters to the Department of Justice Concerning Settlement Offers Covering Persons or Periods Not in Suit Authority: For matters under their respective jurisdictions, to sign recommendation letters to the Department of Justice concerning Settlement Offers related to pending refund cases or any other cases or matters referred to the Department of Justice for prosecution or defense with respect to persons or periods not in suit.

Delegated to:

Chief Counsel
Associate Chief Counsel
Deputy Associate Chief Counsel

Authority: For matters under their respective jurisdictions, to sign recommendation letters concerning Settlement Offers *related* to pending refund cases or any other cases or matters referred to the Department of Justice for prosecution or defense with respect to: (a) periods not in suit ending prior to the date of the resulting settlement agreement; (b) tax consequences for periods not in suit ending after the date of the settlement agreement that necessarily result from the settlement of the periods in suit; (c) issues conceded in full by the taxpayer for periods not in suit ending after the date of the settlement agreement; (d) persons not in suit for the periods described in (a); and (e) persons not in suit for the items described in (b) and (c).

Delegated to:

Regional Counsel
District Counsel
Assistant Chief Counsel

In exercising both of the above authorities, the advice of the Chief of Appeals and/or District Director with jurisdiction over the nonsuit persons or periods should be obtained and considered.

Redelegation: The authority delegated herein may not be redelegated.

Sources of Authority: 26 CFR 301.7122–1, 26 CFR 301.7701–9. To the extent that authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified. This order supersedes Delegation Order No. 155 (Rev. 3), effective October 1, 1991.

Dated: August 15, 1996.

Michael P. Dolan,
Deputy Commissioner.

(Filed by the Ofice of the Federal Register on September 5, 1996, 8:45 a.m., and published in the issue of the Federal Register for September 6, 1996, 61 F.R. 47235)

Part IV. Items of General Interest

Request for Comments on the Effect Under Rev. Proc. 96–47 of a Waiver or Reimbursement of an Expense of a Regulated Investment Company.

Announcement 96–95

Rev. Proc. 96–47, 1996–39 I.R.B. 10, describes certain situations in which distributions made to shareholders of a regulated investment company (RIC) may vary and nevertheless be deductible as dividends under § 562 of the Internal Revenue Code. The Service understands that in some instances a person may waive or reimburse an expense of a RIC and the benefit of the waiver or reimbursement may be allocated to specific shares. In addition, various groups of shares may be allocated different investment advisory fees under a performance-based fee contract. This announcement solicits public comment on what effect, if any, these allocations should have under §§ 561 and 562.

BACKGROUND

Section 852(b)(2)(D) allows a RIC a deduction for dividends paid (as defined in § 561 with certain modifications). Section 561 defines the deduction for dividends paid and applies the rules of § 562 to determine which dividends are eligible for the deduction for dividends paid. Section 562(c) provides that the amount of any distribution is not considered a dividend for purposes of computing the dividends paid deduction under § 561 unless the distribution is pro rata, does not prefer any share of stock of a class over any other share of stock of that same class, and does not prefer one class of stock over another class except to the extent that one class is entitled (without reference to waivers of their rights by shareholders) to the preference. The legislative history to the 1986 amendment to section 562(c) explains that any difference in the investment advisory fee charged to shares of a RIC results in a preference. *See* 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–246, *reprinted at* 1986–3 (Vol. 4) C.B. 246.

Many RICs have issued groups of shares that represent interests in the same portfolio of securities but have different arrangements for shareholder services or the distribution of shares or both (Qualified Groups). Because the fees for these arrangements and services may vary, shareholders with equivalent investments in the same fund may receive different distributions. To permit open-end management investment companies to issue these groups of shares, the Securities and Exchange Commission has adopted Rule 18f–3, 17 C.F.R. 270.18f–3, under the Investment Company Act of 1940, 15 U.S.C. 80a–1 to –64.

Under Rev. Proc. 96–47, variations in distributions to shareholders of different Qualified Groups that exist solely as a result of the allocation of expenses in accordance with the revenue procedure do not prevent the distributions from being dividends under § 562. Occasionally, the person providing services to a RIC waives some or all of its fees for those services. In addition, occasionally a person other than the person providing particular services reimburses the RIC for some or all of the fees that the RIC incurred for those services. Rev. Proc. 96–47 is silent as to the treatment of distributions to shareholders that differ in part as a result of the allocation of the benefit of a waiver or reimbursement.

Rule 18f–3 also permits a group of shares to be allocated disproportionate advisory fees to the extent that any difference in amount allocated ''is the result of the application of the same performance fee provisions in the advisory contract of the company to the different investment performance [net of other expenses]'' of each group. Rev. Proc. 96–47 does not apply to variations in distributions that are due to performance-based advisory fees.

REQUEST FOR COMMENTS

Where there is an allocation of a waiver or reimbursement or of differing advisory fees under a performance-based contract, the Service requests comments on what effect, if any, the allocation should have under §§ 561 and 562. In addition to other matters that commentators are interested in addressing, comments on the following questions may be particularly helpful:

(1) What are the common situations in which expenses of a RIC are waived or reimbursed? In what situations, if any, is a waiver or reimbursement a legal necessity?

(2) What restrictions, if any, limit the ability of a person to waive or reimburse an expense of a RIC?

(3) What accounting methods are used to determine the proper allocation of a waiver or reimbursement?

(4) Should the benefit of a waiver or reimbursement of an expense be required to be allocated in a manner that does not differ from how the unwaived expense would have been allocated?

(5) Does the answer to (4) above vary depending on whether a waiver or reimbursement is made by a person unrelated to the RIC's investment advisor, by a person related to the RIC's investment advisor, or by the RIC's investment advisor itself?

(6) For purposes of §§ 561 and 562, what is the appropriate treatment of variations in distributions that arise as a result of allocation of the investment advisory fee under a contract that compensates the advisor on the basis of applying the same performance-fee provisions to different groups of shares?

METHOD OF MAKING COMMENTS

Comments should be submitted in writing on or before November 22, 1996 to: CC:DOM:CORP:R (Announcement 96–95), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments may be hand delivered to CC:DOM:CORP:R (Announcement 96–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. All comments will be available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this announcement is Arnold Golub of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this announcement, contact Mr. Golub at (202) 622–3950 (not a toll-free call).

Public Hearing on Consolidated Returns—Limitations on the Use of Certain Losses and Deductions; Correction

Announcement 96–100

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to the notice of public hearing.

SUMMARY: This document contains a correction to the notice of public hearing (CO–24–96 [1996–30 I.R.B. 22]) which was published in the Federal Register on Thursday, June 27, 1996 (61 FR 33393). The notice of public hearing generally relates to the carryover and carryback of losses to consolidated and separate return years.

FOR FURTHER INFORMATION CONTACT: David Friedel (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of public hearing that is the subject of this correction is under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the notice of public hearing (CO–24–96) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of public hearing (CO–24–96) which is the subject of FR Doc. 96–15826 is corrected as follows:

On page 33394, column 2, in the preamble, under the heading "Comments and Public Hearing", in the second paragraph, line 2, the language ''for Monday, September 16, 1996, at 10'' is corrected to read "for Thursday, October 17, 1996, at 10".

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed with the Office of the Federal Register on September 10, 1996, 8:45 a.m., and published in the issue of the Federal Register for September 11, 1996, 61 F.R. 47838)

Foundations Status of Certain Organizations

Announcement 96–101

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Alliance for Educational Enhancement, Shreveport, LA
Alternative Coping Resources Inc., Jacksonville, FL
America Family Center Inc., Miami, FL
American Institute for Medieval Studies Inc., Gainesville, FL
American Legal Ethics Institute Inc., Charleston, SC
American Medical Relief Association Incorporated, Winter Haven, FL
Americare Research Institute Inc., Miami, FL
Anchors Aweigh Club Inc., Key West, FL
Animal Aid for Vermilion Area Inc., Abbeville, LA
Artist Foundation of Broward Inc., Hollywood, FL
Arts Alliance Center Inc., Orange Park, FL
Arts Renaissance, Minneapolis, MN
Asian American AIDS Foundation, Chicago, IL
Assistcare, Inc., West Palm Beach, FL
Association of Workers To Acquire Resources for Education, Port Royal, SC
Astronomical Society of Bay County, Panama City, FL
Atlanta Center for Torah Inc., Ft. Lauderdale, FL
Awareness Information Discovery Services Inc., Sunrise, FL
Baby Love Pregnancy Crisis Center Inc., Spring Hill, FL
Basinger Ministries Inc., Okeechobee, FL
Baton Rouge National Senior Sports Classic Inc., Baton Rouge, LA
Bayou Council on Promoting Esteem Inc., Thibodaux, LA
Beaches Sea Turtle Patrol Inc., Jacksonville Beach, FL
Beaufort Alliance for the Mentally Ill, Port Royal, SC
B. E. Enterprenue, Nashatah, WI
Boca Raton Police Athletic League Inc., Boca Raton, FL
Brevard Youth Soccer League Inc., Merritt Island, FL
Cameron Cares Inc. Concerned Adults Responding to the Extra Special, Cameron, LA
Center for Cetacean Studies Inc., Madeira Beach, FL
Charleston Leadership Foundation Inc., Charleston, SC
Children of the King, Conway, SC
Childrens Academy Daycare Center, Jackson, MS
Childrens Home Literacy Council Inc., Ft. Myers, FL
Christian Action Services Association Inc., Orange Park, FL
Christian Fellowship Alive Ministries Inc., Lakeland, FL
Christian Golfers International Inc., Largo, FL
Christian Missionary Research & Advocacy Association Inc., Gainesville, FL
Citizens for Water Inc., Deleon Springs, FL
College Assist Inc., West Palm Beach, FL
College Hill Homes Resident Management Corp, Tampa, FL
Columbia Classical Ballet Company, Columbia, SC
Combat and Transport Aircraft Museum, Broussard, LA
Community and Friends Inc., Charleston, SC
Company Inc. Westlake Powers Theatrical Productions, Ft. Myers, FL
Connections for At-Risk Runaway and Homeless Youth, Columbia, SC
Cooper City Civic Association Inc., Cooper City, FL
Cornerstone Family Counseling Center Inc., Shreveport, LA
Covenant Life Family Ministries Inc., Panama City, FL
Crime Busters, New Orleans, LA
Crown Foundation Inc., Gainesville, FL
D'Iberville Babe Ruth League Inc., D'Iberville, MS
Day and Nite Lovin Care Center of Laurel Inc., Laurel, MS
Dayspring Maternity Home Inc., Melbourne, FL
Dennis Ministries Inc., Ocala, FL
Dispair to Victory Ministries, Baton Rouge, LA
Dominican Republic Educational Foundation Inc., Port Charlotte, FL
Drew Kids Inc., West Palm Beach, FL
Drugs Off the Street, New Orleans, LA
East Hillsborough Law Enforcement Appreciation Association Inc., Plant City, FL

El-Shadi Literacy Center, Greenville, MS
Elijah House of Florida Inc., Sanibel, FL
Faith in Children, Oceanside, CA
Faith Refuge, Inc., Shreveport, LA
Feed My Lambs Inc., Deland, FL
Fibromyalgia Polymyalgia Outreach of Polk County Inc., Lakeland, FL
1st New York Volunteer Engineer Regiment Association, Jacksonville, FL
Florence Family Fling Inc., Florence, SC
Florida Adoption & Childrens Center Inc., Miami, FL
Florida AIDS Foundation Inc., Miami, FL
Florida Association for the Gifted Inc., Fort Lauderdale, FL
Florida Association of Suicidology Inc., Boca Raton, FL
Florida District 10 Little League Baseball Inc., Ft. Lauderdale, FL
Florida Events for the Disadvantaged Inc., Orlando, FL
Florida Fellowship Inc., Tallahassee, FL
Florida School of Addiction Studies Alumni Association Inc., Titusville, FL
Florida Womens Foundation Inc., San Antonio, FL
Floridawatch Institute Inc., Gainesville, FL
Foundation for Civic Development Inc., Picayune, MS
Free Enterprise Partnership of Florida Inc., Jacksonville, FL
Friends of the Cultural Center Inc., Chalmette, LA
Gainesville Area Sports Support Inc., Gainesville, FL
Gateway to Heaven Inc., Morton, MS
Gibbs-Puckett Book Foundation Incorporated, Winter Park, FL
GMAA Grover Loening Scholarship Fund Inc., Sunrise, FL
Gods Community Out Reach Center Inc., Miami, FL
Gospel Truth Foundation Inc., Metairie, LA
Greater Homestead Florida City Chamber of Commerce Charitable Trust Inc., Homestead, FL
Greater Miami Haitian Federation Inc., Miami, FL
Green Horizon Land Trust Incorporated, Lake Wales, FL
Gretna Food Distribution Center Inc., Gretna, LA
Heartbreaker Boxing of America Inc., Daytona Beach, FL
Hollywood Performing Arts Inc., Hallandale, FL
Hope for the Deaf, Inc., Petal, MS
Hospital Jesus is the Rock and Development Center Inc., Miami, FL
Humane Society of Walton County Florida Inc., Defuniak, FL
Inter-Faith Mass Choir Incorporated, Grenada, MS
International Genetic Epidemiology Society Inc., New Orleans, LA
Irish Politicians Foundation Inc., Pensacola, FL
Jazz Society of Baton Rouge, Baton Rouge, LA
Jehovah Shalom Personal Care Home Inc., Jackson, MS
Jennie Moore Relief Fund, Mt. Pleasant, SC
John Mark Ministries Inc., Fernandina Beach, FL
Jordan Park Resident Management Corporation, St. Petersburg, FL
Lifeline Foundation Inc., Jersey City, NJ
Life Through the Word Inc., Paterson, NJ
Lindenwold Baseball Athletic Association, Lindenwold, NJ
Listening Ear Inc., Harrisonburg, VA
Little Lambs Day Care Center Plus Inc., Weehawken, NJ
Love All People Outreach Ministry Incorporated, Edgewater, NJ
Lucretia Mott Center Inc., Philadelphia, PA
Major Thomas B. McGuire Jr Foundation Inc., Woodbury, NJ
Mahima Inc., Lewisdale, MD
Manassas Society for the Preservation of Black Heritage Inc., Manassas, VA
Manufactured Housing Educational Institute Inc., Arlington, VA
Mario B. Magno Scholarship Fund Inc., Washington, DC
Med Insight Incorporated, St. Cloud, MN
Paraclete Ministries Inc., Eustis, FL
Parent Connection of Tampa Bay Inc., Brandon, FL
Park Way Housing Inc., Jacksonville, FL
Zimbabwe Child Survival & Development Foundation, Washington, DC

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Modifications of Debt Instruments; Correction

Announcement 96–102

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (T.D. 8675 [1996–29 I.R.B. 5]) which were published in the **Federal Register** on Wednesday, June 26, 1996 (61 FR 32926). The final regulations relate to the modification of debt instruments.

EFFECTIVE DATE: September 24, 1996

FOR FURTHER INFORMATION CONTACT: Thomas J. Kelly, (202) 622–3930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1001 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (T.D. 8675) contain an error which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8675) which are the subject of FR Doc. 96–15830 is corrected as follows:

§ 1.1001–3 [Corrected]

On page 32935, column 3, § 1.1001–3 (g), paragraph (iv) of Example 5., line 8, the language ''(e)(4)(i)(E) of this section and is a significant'' is corrected to read ''(e)(4)(i)(C) of this section and is a significant''.

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on September 10, 1996, 8:45 a.m., and published in the issue of the Federal Register for September 11, 1996, 61 F.R. 47822)

Consolidated Returns—Limitations on the Use of Certain Losses and Deductions; Correction

Announcement 96–103

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to the final and temporary regulations.

SUMMARY: This document contains corrections to the final and temporary regulations (T.D. 8677 [1996–30 I.R.B. 7]) which were published in the **Federal Register** on Thursday, June 27, 1996 (61 FR 33321). The final and temporary regulations relate to the deductions and losses of members and also to the carryover and carryback of losses to consolidated and separate return years and to the built-in deduction rules.

EFFECTIVE DATE: June 27, 1996

FOR FURTHER INFORMATION CONTACT: David Friedel (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (T.D. 8677) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (T.D. 8677) which are the subject of FR Doc. 96–15823 is corrected as follows:

1. On page 33322, column 3, under the authority citation for Part 1, the entry ''Section 1.1502–1T also issued under 26 U.S.C. 1502'' is corrected to read ''Section 1.1502–1 also issued under 26 U.S.C. 1502''.

2. On page 33322, column 3, under the authority citation for Part 1, the entry ''Section 1.1502–79T also issued under 26 U.S.C. 1502'' is corrected to read ''Section 1.1502–79 also issued under 26 U.S.C. 1502''.

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on September 10, 1996, 8:45 a.m., and published in the issue of the Federal Register for September 11, 1996, 61 F.R. 47821)

Announcement of the Disbarment, Suspension, and Consent to Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under Section 330, Title 31 of the United States Code, the Secretary of the Treasury, after due notice and opportunity for hearing, is authorized to suspend or disbar from practice before the Internal Revenue Service any person who has violated the rules and regulations governing the recognition of attorneys, certified public accountants, enrolled agents or enrolled actuaries to practice before the Internal Revenue Service.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or under suspension from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify such disbarred or suspended practitioners, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent or enrolled actuary, and the date of disbarment or period of suspension. This announcement will appear in the weekly Bulletin for five successive weeks or as long as it is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended or disbarred and will be consolidated and published in the Cumulative Bulletin.

After due notice and opportunity for hearing before an administrative law judge, the following individuals have been disbarred from further practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Styvaert, Richard	San Diego, CA	CPA	July 5, 1996
Davis Jr., George L.	Washington, D.C.	Enrolled Agent	August 15, 1996

Under 31 Code of Federal Regulations, Part 10, an enrolled agent in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his resignation from such practice. The Director of Practice, in his discretion, may suspend an enrolled agent in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any enrolled agent who has resigned from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify former enrolled agents who have resigned from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of former enrolled agents who have resigned from such practice, and date of resignation. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each enrolled agent who has resigned, and will be consolidated and published in the Cumulative Bulletin.

The following individual has offered his resignation as an enrolled agent:

Name	Address	Date of Resignation
Marchioli, Anthony	Dallas, TX	July 12, 1996

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Berry, James R.	Columbus, MO	CPA	June 5, 1996 to December 4, 1997
Rohner Jr., Richard E.	Burr Ridge, IL	CPA	June 10, 1996 to June 9, 1997
Bova, Robert J.	Tampa, FL	CPA	June 10, 1996 to March 9, 1997
Rines, Robert L.	Concord, NH	Attorney	June 17, 1996 to December 16, 1998
Kimball, Randy	Rancho Cucamonga, CA	CPA	July 1, 1996 to December 31, 1996
Cole, Sherman	Oklahoma City, OK	CPA	July 1, 1996 to March 31, 1997
Barretta, Samuel N.	Southfield, MI	Attorney	August 1, 1996 to December 31, 1999
Harris, Luis F.	Orlando, FL	CPA	August 1, 1996 to October 31, 1996
Vourvoulias, James	Park Ridge, IL	CPA	August 1, 1996 to October 31, 1996
Swan, Roy E.	Salem, OR	CPA	August 1, 1996 to January 31, 1997
Hamilton, Barry K.	Twins Falls, ID	CPA	August 1, 1996 to September 30, 1996
Horton, Greta	Richland, VA	CPA	Indefinite from August 2, 1996
Addabbo, Marie P.	Manchester, CT	Enrolled Agent	September 1, 1996 to May 31, 1997
Crouch Jr., Richard E.	Miss'nViejo, CA	CPA	September 1, 1996 to February 28, 1999
Sanders Jr., Wilfred A.	Orlando, FL	CPA	September 1, 1996 to August 31, 1998
Perkins, Nancy F.	Apple Valley, MN	CPA	September 1, 1996 to November 30, 1996
Nichols, Oliver R.	Meriden, CT	CPA	September 1, 1996 to May 31, 1997
Winiemko, Ronald C.	Sterl'g Hts, MI	Attorney	September 1, 1996 to February 28, 1999
Pallman, William F.	Guilford, CT	CPA	September 30, 1996 to January 29, 1997
Gannon, Martin C.	Wallingford, CT	CPA	September 30, 1996 to December 29, 1996
Andrews, Craig A.	Hicksville, OH	CPA	September 30, 1996 to September 29, 1997

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before The Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
Bower, Lewis H.	Tampa, FL	CPA	Indefinite from May 30, 1996
Reiss, Irvin L.	Newton, PA	CPA	Indefinite from June 4, 1996
Reynolds, Mark E.	Brownsburg, IN	Attorney	Indefinite from July 1, 1996
Moore, Philip J.	Rome, GA	CPA	Indefinite from July 10, 1996
Broek, Kevin J.	Omaha, NE	CPA	Indefinite from July 10, 1996
Bein, William	Beachwood, OH	Attorney	Indefinite from August 1, 1996
Henry, Gregory	Bradford, PA	Attorney	Indefinite from August 1, 1996
Sadler, George A.	Houston, TX	Attorney	Indefinite from August 1, 1996
Fuhr IV, John Henry	Dallas, TX	CPA	Indefinite from August 1, 1996
Rakov, Harris J.	Mahwah, NJ	Attorney	Indefinite from August 1, 1996
Perkell, Mark E.	S. Burlington, VT	Attorney	Indefinite from August 1, 1996
Darrah, Robert J.	Neola, IA	CPA	Indefinite from August 21, 1996
Constantino, Enrico J.	Bay Shore, NY	Attorney	Indefinite from August 27, 1996
VanLoan, Jonathan A.	Frazer, PA	Attorney	Indefinite from August 27, 1996
Bennett, John J.	Milford, CT	Attorney	Indefinite from August 27, 1996
Lavin-Munch, Carole A.	Merrionette Pk, IL	CPA	Indefinite from August 27, 1996

Numerical Finding List[1]

Bulletins 1996–27 through 1996–39

Announcements:

96–61, 1996–27 I.R.B. *72*
96–62, 1996–28 I.R.B. *55*
96–63, 1996–29 I.R.B. *18*
96–64, 1996–29 I.R.B. *18*
96–65, 1996–29 I.R.B. *18*
96–66, 1996–29 I.R.B. *19*
96–67, 1996–30 I.R.B. *27*
96–68, 1996–31 I.R.B. *45*
96–69, 1996–32 I.R.B. *38*
96–70, 1996–32 I.R.B. *40*
96–71, 1996–33 I.R.B. *16*
96–72, 1996–33 I.R.B. *16*
96–73, 1996–33 I.R.B. *18*
96–74, 1996–33 I.R.B. *19*
96–75, 1996–34 I.R.B. *29*
96–76, 1996–34 I.R.B. *29*
96–77, 1996–35 I.R.B. *15*
96–78, 1996–35 I.R.B. *15*
96–79, 1996–35 I.R.B. *15*
96–80, 1996–35 I.R.B. *16*
96–81, 1996–36 I.R.B. *13*
96–82, 1996–36 I.R.B. *14*
96–83, 1996–36 I.R.B. *14*
96–84, 1996–36 I.R.B. *14*
96–85, 1996–37 I.R.B. *20*
96–86, 1996–37 I.R.B. *21*
96–87, 1996–37 I.R.B. *21*
96–88, 1996–38 I.R.B. *150*
96–89, 1996–37 I.R.B. *22*
96–90, 1996–37 I.R.B. *22*
96–91, 1996–37 I.R.B. *23*
96–92, 1996–38 I.R.B. *151*
96–93, 1996–38 I.R.B. *151*
96–94, 1996–38 I.R.B. *153*
96–96, 1996–39 I.R.B. *41*
96–97, 1996–39 I.R.B. *41*
96–98, 1996–39 I.R.B. *42*
96–99, 1996–39 I.R.B. *42*

Court Decisions:

2058, 1996–34 I.R.B. *13*
2059, 1996–34 I.R.B. *10*
2060, 1996–34 I.R.B. *5*

Notices:

96–36, 1996–27 I.R.B. *11*
96–37, 1996–31 I.R.B. *29*
96–38, 1996–31 I.R.B. *29*
96–39, 1996–32 I.R.B. *8*
96–40, 1996–33 I.R.B. *11*
96–41, 1996–35 I.R.B. *6*
96–42, 1996–35 I.R.B. *6*
96–43, 1996–36 I.R.B. *7*
96–44, 1996–36 I.R.B. *7*
96–45, 1996–39 I.R.B. *7*
96–46, 1996–39 I.R.B. *7*
96–47, 1996–39 I.R.B. *8*
96–48, 1996–39 I.R.B. *8*

Proposed Regulations:

CO–9–96, 1996–34 I.R.B. *20*
CO–24–96, 1996–30 I.R.B. *22*
CO–25–96, 1996–31 I.R.B. *30*
CO–26–96, 1996–31 I.R.B. *31*
FI–28–96, 1996–31, I.R.B. *33*
FI–32–95, 1996–34 I.R.B. *21*
FI–48–95, 1996–31 I.R.B. *36*

Proposed Regulations—Continued

FI–59–94, 1996–30 I.R.B. *23*
GL–7–96, 1996–33 I.R.B. *13*
IA–26–94, 1996–30 I.R.B. *24*
IA–29–96, 1996–33 I.R.B. *14*
IA–292–84, 1996–28 I.R.B. *38*
INTL–4–95, 1996–36 I.R.B. *8*
PS–22–96, 1996–33 I.R.B. *15*
PS–39–93, 1996–34 I.R.B. *27*
REG–209827–96, 1996–37 I.R.B. *19*
REG–208215–91, 1996–38 I.R.B. *145*

Public Laws:

104–117, 1996–34 I.R.B. *19*
104–134, 1996–38 I.R.B. *7*
104–168, 1996–38 I.R.B. *8*

Railroad Retirement Quarterly Rate

1996–29 I.R.B. *14*

Revenue Procedures:

96–36, 1996–27 I.R.B. *11*
96–37, 1996–29 I.R.B. *16*
96–39, 1996–33 I.R.B. *11*
96–40, 1996–32 I.R.B. *8*
96–41, 1996–32 I.R.B. *9*
96–42, 1996–32 I.R.B. *14*
96–43, 1996–35 I.R.B. *6*
96–44, 1996–35 I.R.B. *7*
96–45, 1996–35 I.R.B. *12*
96–46, 1996–38 I.R.B. *144*
96–47, 1996–39 I.R.B. *10*
96–48, 1996–39 I.R.B. *10*

Revenue Rulings:

96–33, 1996–27 I.R.B. *4*
96–34, 1996–28 I.R.B. *4*
96–35, 1996–31 I.R.B. *4*
96–36, 1996–30 I.R.B. *6*
96–37, 1996–32 I.R.B. *4*
96–38, 1996–33 I.R.B. *4*
96–39, 1996–34 I.R.B. *4*
96–42, 1996–35 I.R.B. *4*
96–43, 1996–36 I.R.B. *4*
96–44, 1996–38 I.R.B. *4*
96–45, 1996–39 I.R.B. *5*
96–46, 1996–39 I.R.B. *5*

Tax Conventions:

1996–28 I.R.B. 36
1996–36 I.R.B. *6*

Treasury Decisions:

8673, 1996–27 I.R.B. *4*
8674, 1996–28 I.R.B. *7*
8675, 1996–29 I.R.B. *5*
8676, 1996–30 I.R.B. *4*
8677, 1996–30 I.R.B. *7*
8678, 1996–31 I.R.B. *11*
8679, 1996–31 I.R.B. *4*
8680, 1996–33 I.R.B. *5*
8681, 1996–37 I.R.B. *17*
8682, 1996–37 I.R.B. *4*

[1]A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.

Finding List of Current Action on Previously Published Items[1]

Bulletins 1996–27 through 1996–39

*Denotes entry since last publication

Revenue Procedures:

80–27
Modified by
96–40, 1996–32 I.R.B. *8*

87–32
Modified by
TD 8680, 1996–33 I.R.B. *5*

92–20
Modified by
TD 8680, 1996–33 I.R.B. *5*

95–29
Superseded by
96–36, 1996–27 I.R.B. *11*

95–29A
Superseded by
96–36, 1996–27 I.R.B. *11*

95–30
Superseded by
96–42, 1996–32 I.R.B. *14*

[1]A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.